The Lincoln Park Zoological Society *and* Public Service Employees Union Local 46, Service Employees International Union, AFL–CIO. Case 13–CA–33085

September 30, 1996

DECISION AND ORDER

BY MEMBERS BROWNING, FOX, AND HIGGINS

On July 5, 1996, Administrative Law Judge Robert A. Giannasi issued the attached decision. The Respondent filed exceptions and a supporting brief, the Union filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, The Lincoln Park Zoological Society, Chicago, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In adopting the judge's finding that the Respondent violated Sec. 8(a)(5) by refusing to recognize and bargain with the Union, Members Browning and Fox find it unnecessary to rely on the judge's discussion of *Russelton Medical Group*, 302 NLRB 718 (1991).

Diane E. Emich, Esq., for the General Counsel.
Linzey D. Jones Jr., Esq., of Chicago, Illinois, for the Respondent.
Joel A. D'Alba, Esq., of Chicago, Illinois, for the Charging Party.

DECISION

ROBERT A. GIANNASI, Administrative Law Judge. This case was tried on May 1, 1996, in Chicago, Illinois. The complaint alleges that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize the Charging Party Union (the Union) as the exclusive bargaining representative of the employees of the Lincoln Park Zoological Gardens (the Zoo) in an appropriate unit. Those employees had been represented by the Union when the Zoo was operated by a predecessor employer, the Chicago Park District, which continues to own the Zoo. The Respondent denied the essential allegations in the complaint, and the parties filed helpful posthearing briefs that I have read and considered.

Based on the entire record, including the testimony of the witnesses and my assessment of their demeanor on the witness stand, I make the following

FINDINGS OF FACT

I. JURISDICTION

Effective January 1, 1995, Respondent, an Illinois corporation, with an office and place of business in Chicago, Illinois, entered into a written agreement with the Chicago Park District, a municipal corporation, to undertake operating responsibilities with respect to the Lincoln Park Zoo and it commenced its responsibilities under that agreement on January 1, 1995. Prior thereto, Respondent was engaged in the business of fund raising and managing various segments of zoo operations. It is admitted that during a representative 1-year period, Respondent derived gross revenues in excess of $1 million and purchased and received at its Chicago facility goods valued in excess of $50,000 directly from points outside of Illinois. Accordingly, I find, as Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

In accordance with the agreement of the parties at the hearing, I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE UNFAIR LABOR PRACTICES

A. *The Facts*

For many years, until January 1, 1995, the Zoo was operated by its owner, the Chicago Park District. The 70 to 80 zoo employees were part of a districtwide unit of approximately 2500 employees working at some 100 different locations, all of whom were represented by the Union. That representation was marked by successive collective-bargaining agreements since at least 1984. In that year, the Chicago Park District and its employees came under the jurisdiction of the Illinois Public Labor Relations Act (IPLRA) which created the Illinois State Labor Relations Board (ISLRB) and the Illinois Local Labor Relations Board (ILLRB) (Ill. Rev. Stat. 1991, Ch. 48, pars. 161 et seq., 5 ILCS 315).

IPLRA and applicable Rules and Regulations govern the labor relations of the Chicago Park District employees. In significant respects, IPLRA provides the same substantive and procedural safeguards as the National Labor Relations Act. Thus, for example, the Illinois Board certifies bargaining units, conducts elections and entertains unit clarification and decertification petitions. The Illinois Act also provides, as does the National Act, that an appropriate unit may not contain professional and nonprofessional employees unless there is an election approving such a combined unit. Finally, Section 9(c) of the IPLRA provides as follows with respect to bargaining units in existence prior to the passage of that legislation:

> Nothing in this Act shall interfere with or negate the current representation rights or patterns and practices of labor organizations which have historically represented public employees for the purpose of collective bargaining . . . unless a majority of employees so represented

express a contrary desire pursuant to the procedures set forth in this Act.

The Union has actively represented the Zoo's employees both in negotiating separate wage scales for zoo-specific job titles and in handling grievances for them. There is no evidence on this record of any disaffection from the Union on the part of zoo employees. There is also no evidence concerning the pre-1984 origins of the bargaining relationship between the Park District and the Union, including the representation of the Zoo's employees.

In 1994, the Park District began negotiations with the Respondent for the latter to take over the operation of the Zoo. Prior to this point, Respondent was affiliated with the Zoo in a fundraising capacity. It also apparently supplemented the salaries of some zoo employees and provided some supervisory personnel for zoo operations.

On November 4, 1994, the Park District and Respondent reached a tentative agreement to take over zoo operations on January 1, 1995. The anticipated takeover was announced to zoo employees at about this time. The employees were told that they would be interviewed for positions with Respondent but that Respondent would institute changes in benefits and promulgate a new employee handbook. In mid-December 1994, Respondent completed interviewing applicants and offered positions to most zoo employees. The ultimate and final operating agreement was dated January 1, 1995. It included an agreement that Respondent would hire at least 75 percent of the Zoo's employees. Respondent also agreed that the Zoo would continue the Park District's policy of not charging admission to the public.

On December 12 and again on December 15, 1994, the Union requested that Respondent recognize and bargain with it. On December 14, 1994, Respondent replied to the first request by stating that the Union's request was premature. Later, after it actually commenced zoo operations, Respondent confirmed that it would not recognize or bargain with the Union as a successor employer.

As of January 1, 1995, when it took over operation of the Zoo, Respondent apparently employed 75 individuals in the 4 zoo-specific job classifications involved here. Sixty-two were animal keepers, nine were lead keepers, one was a veterinary technician, and four were program coordinators. A majority of these employees worked in these same or similar positions for the Chicago Park District. Indeed, I have no reason to doubt that Respondent carried out its promise to hire at least 75 percent of the Zoo's employees. There are some minor differences in job titles. For example, the program coordinators were called education specialists and the lead keepers and animal keepers were called animal keepers class 1 and class 2 when the Zoo was operated by the Park District. But there were no changes in the jobs themselves.

There seems to be some confusion in the documentary evidence, specifically General Counsel's Exhibit 13, as to the number of program coordinators employed by Respondent. This is important because Respondent contends that the program coordinators are professional employees. General Counsel's Exhibit 13 lists four coordinators, including Mary Jo Huck and Jason Diem, as having been employed as of January 1, 1995. Respondent's witnesses, however, only mentioned three presently employed coordinators in their testimony. Huck was not mentioned at all and Diem was described as having been employed in his first job after graduation in March 1995. Neither Huck nor Diem appears on another exhibit which lists the coordinators employed by the Park District as of November 30, 1994. Thus, it appears that General Counsel's Exhibit 13 is in error, at least insofar as it lists Diem as being employed on January 1, 1995. This error and the confusion I have mentioned do not affect my findings here, although they do diminish the confidence I have in the exhibits describing who was employed at what point in the coordinator job category. I will have more to say about the coordinators later in this decision.

B. *Discussion and Analysis*

Under the Board's successorship doctrine, approved by the Supreme Court in *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27, 41–42 (1987), "[i]f the new employer makes a conscious decision to maintain generally the same business and to hire a majority of its employees from the predecessor, then the bargaining obligation of [Section] 8(a)(5) is activated." The focus of the Board's inquiry is on "substantial continuity" of the employing entity in terms of job situations and expectation of continued representation, measured from the "employees' perspective." Id. See also *Williams Enterprises*, 301 NLRB 167 (1991).

The General Counsel alleges that Respondent was a successor to the Park District as the employer of the Zoo's employees in an appropriate unit and thus violated the Act by refusing to recognize and bargain with the Union after it took over operation of the Zoo. I agree. In the instant case, the General Counsel has shown substantial continuity in the employing entity. The Respondent operated the Zoo, at the same location, much as it was operated by the Park District. It utilized the same supervisors and basically the same employees, a substantial majority of whom had worked at the Zoo when it was operated by the Park District. Since zoo employees had been represented by the Union before the change in operational authority on January 1, 1995, and nothing in their jobs or working conditions had changed, at least from their perspective, they had every reason to believe that their union representation would likewise not change. Indeed, there is no evidence on this record of any disaffection from the Union on the part of zoo employees, who, because they worked in a single, integrated operation at one location, formed an appropriate unit of their own for bargaining purposes.[1]

Respondent does not deny that it continued to operate the Zoo as it had been operated under the Park District with the same supervisors and that at least a majority of its newly hired employees were former Park District zoo employees. It denies it is a successor, however, because (1) the predecessor was a public employer whose employees were not shown ever to have selected the Union by a majority vote; (2) the zoo unit was only part of the larger citywide unit represented by the Union; and (3) the zoo unit was inappropriate insofar as it included professional employees—the program coordinators—who had not been given an opportunity to vote for inclusion in the combined unit of professional and nonprofes-

[1] In a successorship situation, the alleged successor who hires a majority of its employees from the predecessor in a basically unchanged operation has the heavy burden of proving the historical unit it takes over is inappropriate. See *Trident Seafoods, Inc.*, 318 NLRB 738 (1995).

sional employees. In my view, these contentions are without merit and do not defeat the successorship finding which I make on this record. Accordingly, I find that Respondent was a successor employer and, as such, was required to bargain with the Union as the representative of the Zoo's employees.

Respondent does not dispute that the successorship doctrine applies even though the predecessor was a public employer. See *JMM Operational Services*, 316 NLRB 6 (1995). Respondent claims, however, that the General Counsel must nevertheless establish that the Union had achieved majority status as the predecessor's bargaining representative. There is no such requirement in successorship cases. Indeed, it is clear from the Supreme Court's opinion in *Fall River* that the usual presumptions of majority status inherent in Board law apply in successorship situations to ensure stability in collective-bargaining relationships. 482 U.S. at 37–39. See also *Saks Fifth Avenue*, 247 NLRB 1047, 1051 and fn. 10 (1980), enfd. 634 F.2d 681 (2d Cir. 1980). Such presumptions include those that flow from voluntary or historical recognition and contractual relationships. See, in addition to *Saks*, supra, *Vincent M. Ippolito, Inc.*, 313 NLRB 715, 721 (1994), and *Exxel/Atmos, Inc. v. NLRB*, 28 F.3d 1243, 1247 (D.C. Cir. 1994).

The Union's representative status in this case is easily supported by established presumptions as well as statutory authority. Since at least 1984 the Union has been voluntarily recognized as the bargaining representative of the Zoo's employees, and that recognition has been embodied in successive bargaining agreements. The preamble to the latest agreement between the Chicago Park District and the Union contains a statement that the Park District "is convinced that a substantial majority of the employees covered by this Agreement desire the Union to represent them for purposes of collective bargaining and contract administration." Indeed, the Union's pre-1984 representative status was legislatively recognized by the State of Illinois in Section 9(c) of IPLRA. Moreover, since IPLRA itself provides essentially the same safeguards as the National Labor Relations Act, the Zoo's employees had the same recourse to alter their representation as they would have had had they been covered under the National statute. There is, in any event, no record evidence that anyone sought to question the Union's majority status before the Respondent's takeover of the Zoo. In these circumstances, I find that the Union was the lawful bargaining agent of the zoo employees at the time of the takeover.[2]

Nor is my finding that there was substantial continuity in the employing entity from the perspective of the employees affected by the change in the size of the unit. It is well settled that a mere diminution in the size of a successor's unit, as compared with that of the predecessor, does not "change the nature of the [employing entity] so as to defeat the employees' expectation in continued representation by their union." *Fall River*, supra, 482 U.S. at 46 fn. 12. See also *Zim's IGA Foodliner v. NLRB*, 495 F.2d 1131, 1141 (7th Cir. 1974), cert. denied 419 U.S. 838 (1974); and *Hydrolines, Inc.*, 305 NLRB 416, 423 (1991). As the Seventh Circuit has recognized, "the Board may treat a much-reduced bargaining unit as a minature of the former unit." *Zim's Foodliner*, supra.

Respondent asserts a lack of substantial continuity because the predecessor was a public employer bargaining in a 2500-person unit at some 100 locations in the city of Chicago and the Respondent is a nonprofit corporation which took over a unit of 75 employees at one location. In support of its position, Respondent relies on three cases that I find distinguishable.

In *Atlantic Technical Services Corp.*, 202 NLRB 169 (1973), the predecessor's bargaining obligation encompassed a nationwide unit of about 14,000 mechanics and related classifications at many locations. The successor took over the mail and distribution operation at one location where the union represented about 1100 employees. The successor hired 41 employees for its mail and distribution operation, 27 of whom had worked for the predecessor. Thus, as the Board found, the successor's 41 employee operation was only a "small fraction" of the predecessor's nationwide unit of 14,000 employees and only 4 percent of the predecessor's 1100 employees at the one location which included the mail and distribution operation. Here, in contrast, the Respondent took over the entire Zoo operation at one location. Indeed, the Zoo was a separate integrated operation that had no significant interchange or relationship with the rest of the citywide unit of which it was a part. The Zoo had its own job classifications for which a wage rate was separately negotiated. This is not the type of diminution that defeats a successorship finding. See *Helnick Corp.*, 301 NLRB 128 (1991).

A second case cited by Respondent, *Nova Services Co.*, 213 NLRB 95 (1974), is likewise distinguishable. In that case, the successor, which took over the janitorial services at part of one facility served by the predecessor in a statewide unit, used only part of its work force at the facility. Here, the Respondent not only took over the entire zoo operation, but it operates no other zoos or comparable businesses at any other location. Moreover, *Nova* is of questionable precedential value since it has been limited to its own facts in a recent Board decision. See *Hydrolines*, supra, 305 NLRB at 422–423.[3]

In short, I find nothing in the case law or in the record to support Respondent's contention concerning the change in the size of the unit. There is no reason to believe, from the perspective of the employees, that their expectations in continued representation by the Union would be affected by the fact that the Zoo was previously operated by a public employer or that the Zoo itself was only part of the citywide unit represented by the Union.

Respondent does not dispute that the zoo-wide unit is an appropriate bargaining unit except in one respect. It alleges

[2] Respondent's analogy (Br. 13–17) to cases in the construction industry is not persuasive. In those cases, the Board was unwilling to presume majority status from agreements clearly based on Sec. 8(f) of the Act, which legitimizes agreements with a minority union. The Union's recognition by the Park District was based on the Park District's voluntary recognition of the Union as majority representative of the employees.

[3] The third case cited by Respondent, *W & W Steel Co. v. NLRB*, 599 F.2d 934 (10th Cir. 1979), denied enforcement to a Board decision finding successorship. I am, of course, bound by Board decisions, not those of a court denying enforcement to those decisions. More importantly, however, the court in *W & W Steel*, supra, rested its decision on the view that a successorship obligation must be based on a recent certification, a position that was specifically rejected 8 years later by the Supreme Court in *Fall River*, 482 U.S. at 41–43.

that the unit is inappropriate because it includes professional employees—the three program coordinators—who were never afforded an opportunity to vote for inclusion in a combined unit with nonprofessional employees. Both the Act and IPLRA require such an election in combined units, and there is no record evidence of any such election in this case. Although historical inclusion without an election may have precluded a predecessor from raising the matter, Respondent is correct when it points out that the Board will view as inappropriate, from the standpoint of a successor, a combined unit in which professionals have not been afforded the opportunity to decide whether they wish to be included in that combined unit. See *Russelton Medical Group, Inc.*, 302 NLRB 718 (1991).

I reject Respondent's contention in this respect because I find that the program coordinators are not professional employees within the meaning of Section 2(12) of the Act. Their work does not involve "the consistent exercise of discretion and judgment" and it does not require knowledge of an advanced type in a specialized field. See *Twin City Hospital Corp.*, 304 NLRB 173, 174–175 (1991); *Norton Community Hospital*, 291 NLRB 1174, 1175 (1988); *Express News Corp.*, 223 NLRB 627, 630 (1976); *Aeronca, Inc.*, 221 NLRB 326, 327, 329 (1975).

The evidence concerning the work of the three program coordinators was sketchy at best. None of the program coordinators testified. Two of them are supervised by Director of Visitor and Fee Based Programs LuAnne Metzger and the other is supervised by Judith Kolar, the director of the Polk Brothers Institute, which apparently has some affiliation with the Zoo. Respondent submitted the testimony of Human Resources Director Jessica Berger and Director Metzger and the General Counsel submitted the testimony of Zoo Keeper Barbara Katz on this issue. Neither Berger nor Katz was able to shed much light on the jobs of the program coordinators themselves. I found Berger's testimony unhelpful both because she knew very little about the work of the coordinators or their supervision and because I found her to be an unreliable witness. She was too quick to volunteer that the coordinators were professional employees based on having read a book about the subject. Katz' testimony was more useful because she has a specialized background and actually puts on educational programs of her own, even though she is a zoo keeper and not a coordinator.

Metzger testified about the work of the two program coordinators under her supervision. Even her testimony, however, was not entirely reliable. At times in her testimony, particularly on direct, she testified about the expansive nature of the work of the coordinators; at other times, particularly on cross-examination, she back-tracked considerably. It is her testimony on cross-examination that I find most reliable.

The record shows that the coordinators are involved in producing lectures, demonstrations and other programs for zoo lovers of all ages. The Zoo apparently puts on some 50 such programs each year, including six 1-week zoo camps for young children. The coordinators develop concepts and curricula for the programs, find lecturers and speakers for most of the programs and put some on themselves, help develop budgets for the programs, and participate in the hiring of summer counselors for the zoo camps. Contrary to Respondent's contention, I do not view the coordinators as teachers. There is no record evidence that they are required to be certified as teachers and they generally do not put on the programs themselves. Indeed, it appears, particularly from Metzger's testimony on cross-examination, that the planning and implementation of programs under her supervision is handled as part of a team or group effort between her and her two coordinators.

Thus, although Metzger testified at one point that the coordinators "at times" use discretion with respect to budgets, she later testified that their discretion was limited by her own review of budget matters. She testified that she and the coordinators "did budgets together" and that they "work as a team." Indeed, neither of her coordinators have any kind of expertise in budget matters. With respect to the summer zoo camp, Metzger testified that the camp had "a history" and was a "well run program," thus confirming that the coordinators had little discretion and simply followed precedent in planning for this activity. As to the hiring of counselors for the zoo camp, it is clear from Metzger's testimony that she participated in the decision to hire, and, here again, the discretion of the coordinators was limited. Finally, with respect to curriculum development, which seems to be the most significant aspect of the coordinator's job, Metzger testified as follows:

> [The coordinators] concept some ideas out for me to see if there's any of them that I really think are going in the wrong direction, or if there's any that I think they should focus on. They then go out and develop curriculum and keep me posted on where it's going and how it's going.

This is not the type of discretion and judgment one associates with professional employees.

Nor does the work of the coordinators require knowledge of an advanced type in a specialized field. It is, of course, the work of the employee, not the educational background or the job title that is to be evaluated. Nevertheless, an analysis of the educational backgrounds of the coordinators does not yield the type of specialized knowledge that requires a finding that they are professional employees. According to Berger, who testified from her "best recollection," the coordinator who worked under Kolar, Sue Teller-Marshall, has a master's degree, which Berger "believe[s]" was in education. Of the two coordinators under Metzger's supervision, one, Jason Diem, was hired by Respondent in March 1995. Although he does have a master's degree in environmental science education, this was his first job after graduation. The other coordinator under Metzger's supervision, Lynn Piper, apparently has a bachelor's degree, but there is no evidence as to her specialty, if any.

In any event, there is no evidence that the work of the coordinators involves knowledge of an advanced type in a specialized field. No job descriptions were provided for the coordinators' positions, but Respondent caused to be introduced in evidence, without objection, the job vacancy announcement for the coordinator's position that was apparently filled by Diem. It was dated February 1995, at least a month after Respondent took over the Zoo. I do not find it to be an accurate or reliable indicator of the actual work duties of the coordinators. I find more reliable the testimonial evidence that I have discussed above. I also find highly relevant the testimony of animal keeper Barbara Katz. She has a bachelor of

science degree, as do at least some other animal keepers. Her degree is in biology and she is a published author on cranes. She also sometimes develops educational programs in her specialty, birds of prey, which she presents herself. While her job includes the feeding and care of animals, her program presentations seem to me to involve much more discretion that that required of coordinators. Moreover, she appears more learned than they are, and her learning, unlike theirs, is in a specialized field related to zoo operations. It has not been shown that any of the coordinators—despite the requirement that they, unlike animal keepers, have college degrees—must have any particular specialty that is used in their jobs. The only arguable specialty of this kind would be teaching or education. But, as I have indicated, it is not shown that the coordinators are certified teachers. They do not for the most part teach anything, and, even then, it is unclear what kind of specialty is utilized in the teaching function. One of the coordinators does not even have a background or degree in education, so far as the record shows.[4]

Respondent cites three cases which it alleges support its position that the program coordinators are professional employees. Those cases are distinguishable, and, in my view, the differences between those cases and this support my finding that the coordinators are not professional employees. In two of those cases, *TWA, Inc.*, 211 NLRB 733, 734 (1974), and *Chase House, Inc.*, 235 NLRB 792 (1978), the employees involved were teachers with specialized training. In *TWA*, certain space science lecturers were deemed professional employees because they were required to meet certain special education and experience specifications imposed by NASA, the governmental entity for whom the employer provided services. Included in that unit as nonprofessional employees were commentator escorts and presentation specialists, whose jobs seem more nearly to resemble those of the program coordinators employed by Respondent. Nor do the coordinators in this case perform the teaching work that required "knowledge of an advanced type" like that performed by the space science lecturers. In *Chase*, certain teachers at a Head Start program, who were required to have a specialty in early childhood or primary education, were found to be professional employees. Here, in contrast, the coordinators are not primarily teachers. They are not required to have teaching credentials in any specific field. Nor do they utilize the type of discretion or judgment utilized by a teacher.

The other case relied upon by Respondent is also distinguishable. In *Sutter Community Hospital*, 227 NLRB 181, 188–189 (1976), the Board found that a single educational programmer who had "sole responsibility" for development of videotape programs for use of home dialysis equipment was a professional employee. Unlike the situation here, the programmer's work involved discretion and judgment and knowledge of an advanced type in a specialized field. The program coordinators do not have sole discretion in developing programs or budgets; they work with their supervisor as a team. Nor does their work require knowledge of an advanced type in a specialized field.

In these circumstances, I find that the program coordinators do not consistently exercise discretion and judgment in the performance of their work and their work does not require knowledge of an advanced type in a specialized field. They are therefore not professional employees within the meaning of the Act.

Conclusions of Law

1. Respondent is the successor employer to the Chicago Park District in the following appropriate unit:

> All animal keepers, lead keepers, veterinary technicians, and program coordinators employed by Respondent at the Lincoln Park Zoological Gardens in Chicago, Illinois, but excluding professional employees, guards and supervisors as defined in the Act.

2. By failing and refusing to recognize and bargain with the Union as the bargaining agent in the above appropriate unit on and after January 1, 1995, Respondent has violated Section 8(a)(5) and (1) of the Act.

3. The above violation is an unfair labor practice affecting commerce within the meaning of the Act.

Remedy

Having found that Respondent has engaged in an unfair labor practice in violation of Section 8(a)(5) and (1) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. The Respondent will be ordered to bargain with the Union on request.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Lincoln Park Zoological Society, Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with Public Service Employees Union, Local 46, Service Employees International Union, AFL–CIO as the exclusive representative of its employees in the following appropriate unit.

> All animal keepers, lead keepers, veterinary technicians, and program coordinators employed by Respondent at the Lincoln Park Zoological Gardens in Chicago, Illi-

[4] I also view with skepticism the requirement in the job vacancy that the applicant have 3 to 5 years of experience in "curriculum development and instructional design." First of all, I have no idea what this means or whether the phrase describes a subject of advanced study or a even a specialty that would qualify a person as a professional employee. Indeed, the person hired for the position advertised in the announcement was not shown to have had such experience. He had just graduated with a degree in a field that was not shown by record evidence to have had anything to do with curriculum development or instructional design. More importantly, the testimonial evidence does not support a finding that the coordinators have anything but shared authority with their supervisors in curriculum development, and there is no evidence as to the definition of "instructional design" or that it plays a role in the work of the coordinators.

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

nois, but excluding professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain with the Union as the exclusive representative of the employees in the appropriate unit set forth above concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Within 14 days after service by the Region, post at its Chicago, Illinois facility copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 1, 1995.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to recognize and bargain with Public Service Employees Union, Local 46, Service Employees International Union, AFL–CIO as the exclusive representative of our employees in the following appropriate unit:

All animal keepers, lead keepers, veterinary technicians, and program coordinators employed by us at the Lincoln Park Zoological Gardens in Chicago, Illinois, but excluding professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL recognize and, on request, bargain with Public Service Employees Union, Local 46, Service Employees International, AFL–CIO as the exclusive representative of our employees in the appropriate unit set forth above concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

LINCOLN PARK ZOOLOGICAL SOCIETY